IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 381 OF 2002

IN

SUIT NO. 395 OF 2002

Satish S. Paralkar .. Plaintiff.

vs.

V.V. Tulzapurkar & Ors. .. Defendants.

Plaintiff in person.

Mr. K.J. Munshi i/n Soloman & Co.

for defendant no. 1.

Mr. D.R. Sanghvi for defendant nos. 5 & 6.

CORAM : S.U. KAMDAR, J.

DATE : 26th AUGUST, 2005.

ORAL JUDGEMENT :

. The present suit is filed by the plaintiff inter alia claiming that he is the owner in respect of the flat bearing no. 12 situate on the 4th floor of the building known as "Navneet" 125, Ram Maruti Road, Dadar (West), Mumbai - 400 028. It is an admitted position that under the development agreement dated 19.4.1991 executed by the original

owner of the building Mrs. Pushpa S. Paralkar rights in respect of the said land and balcony FSI of the said building were given to the developer the defendant no. 7. Under the said development agreement, he was also given the right to sell the flats which are constructed by him on ownership basis excluding the flat on the fifth floor which was allotted to the plaintiff as the owner of the said property in consideration of conferring development rights on the defendant no.7. Pursuant to the said agreement for sale, the said flats are constructed by the defendant no. 7 and are sold by the defendant no. 7 on what is popularly known as ownership basis. The terms and conditions of the said agreement for development dated 9.4.1991 in clauses 25 and 26 read as under :-

> "25. Upon the sale of flats by the Developer on what is known as ownership basis the purchasers of such flats will have to join the formation of an Association in accordance with the provisions of the Maharashtra Apartments Ownership Act, 1976 and the Rules thereunder.
>
> "26. The Purchasers of the flats shall not be entitled to the conveyance of their respective Apartments viz. the Deed of Apartment, until all the formalities under

the Maharashtra Apartment Ownership Act, 1976, and the rules thereunder, in regard to the formation and registration of the Association of the Apartment Owner are complied with by them and the Association is duly formed and registered.

However, the plaintiff contends that even though he gave the land and balance FSI under development agreement to the defendant no. 7 to construct the flats and sell the same on ownership basis, he continues to be the owner in respect of the said property. It is thus his contention that though flat no. 12 is sold by the defendant no. 7 to the defendant no. 1 on ownership basis still the defendant no. 1 is not the owner but he continues to be the owner of the said property. It is his further contention that under the said agreement a co-operative society or apartment association was required to be formed and no such association or society is formed. It is his case that the conveyance of the said property was to be conferred on said society or association or association and in absence thereof defendant no. 1 is not the owner of the said flat no. 12 in the said building. Thus transfer/sale of the said flat by the defendant no. 1 to third party without the consent of the plaintiff is illegal and therefore receiver should be appointed of the said flat.

2. In my opinion, the argument advanced by the plaintiff is thoroughly misconceived. The defendant no. 1 has acquired the right, title and interest in the flat no. 12 situated in the said building on purchase thereof on what is popularly known as on ownership basis. Merely because in clauses 25 and 26 it is provided that ultimate conveyance of the building will be given to the society, that does not preclude any owner of the flat from selling the said flat or transfer the right, title and interest in respect thereof to third party as the purchaser would as per clause 26 of the agreement join a society to be formed of the flat purchasers then existing at the time when the society is formed. Even if the conveyance is not executed still the defendant no. 1 having paid the full price of the flat under Agreement by which he has purchased the flat is an equitable owner and has right to sell the said flat subject to the terms and conditions of his agreement. The plaintiff however contends that the defendant no. 1 ought to have taken his permission for the sale of the flat. The said contention is totally frivolous. The plaintiff has no right, title or interest in the said flat or under any clauses of the agreement any permission of the plaintiff is required to be obtained. In view thereof, the present notice of motion taken out for appointment of Court Receiver and/or injunction is

thoroughly misconceived. Motion dismissed. No order as to costs.